IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

CRP.No. 3117 of 2000(D)

AA.54/1995 of APPELLATE AUTHORITY, (LR)KANNUR
O.A.19345/1975 OF DY.COLLECTOR (LT) KANNUR

REVN. PETITIONER:APPELLANT/PETITIONER

PATTATHIL RAGHAVAN NAMBIAR
S/O.KANNAN NAMBIAR
KURUMATHOOR AMSOM, DESOM
KANHIRANGAD P.O. TALIPARAMBA.

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS:RESPONDENTS/RESPONDENT

1. THE EXECUTIVE OFFICER,
   SREE KADAMBERI CHUZHALI BHAGAVATHY
   DEVASWOM, P.O. KANUL.
2. NINGILERI GOURI AMMA,
   W/O.KUNHIKANNAN NAIR.
3. NINGILERY SUDHEER, S/O.KUNHIKANNAN NAMBIAR
4. -DO- SUGADEV, -DO-
5. NINGILERI KALLIANIKUTTY
   D/O.KUNHIKANNAN NAMBIAR

6. NINGILERI LAKSHMI DEVI, -D0-
7. NINGILERI HYMAVATHI, -DO-

(1 TO 7 RESPONDENTS ARE RESIDING AT CHORAKALA,
KURUMATHOOR AMSOM, DESOM P.O. KURUMATHOOR)

8. STATE OF KERALA REP. BY CHIEF SECRETARY
   SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER
SRI.V.RAJAGOPAL FOR R2 TO R4

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD 4/4/07
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.3117 OF 2000

Dated, this the 4th day of April,2007

O R D E R

Revision petitioner is the appellant in A.A.54/1995 on the file of Appellate Authority (Land Reforms) Kannur and the A party in O.A.19345/1975 on the file of Deputy Collector (LT), Kannur. Respondents 2 to 7 are the landlords and first respondent, the Executive officer of Kadamberi Chuzhali Bhagavathy Devaswom. The original application was filed before the Land Tribunal for assignment of jenm right over 40 cents of land in R.S.No.36 of Kurumathur Village. The jenm right of the property admittedly originally belonged to Kadamberi Devaswom. The case of revision petitioner was that he is a tenant of the said property and he is therefore entitled to get assignment of the jenm right. The Land Tribunal

originally allowed the O.A. and granted a purchase certificate. Respondents 2 to 7 filed A.A.133/1983 before Appellate Authority challenging that order. The Appellate Authority set aside the original order and remanded the case back to the Land Tribunal. Thereafter Land Tribunal as per order dated 10.1.1995 dismissed the application. Revision petitioner challenged the dismissal of the order in A.A.54/1995. The Appellate Authority on appreciation of evidence confirmed the order of the Land Tribunal and dismissed the appeal. It is challenged in the revision filed under section 103 of the Kerala Land Reforms Act.

2. Learned counsel appearing for petitioner was heard.

3. The case of revision petitioner was that one acre 40 cents of the property in that survey number including 40 cents, the subject matter of the O.A., was obtained on leasehold right by Kunhikannan Nambiar, and as per the oral lease in

1960, petitioner has been in possession of the property as a tenant and after the death of Kunhikannan Nambiar, under Ext.B1 assignment deed dated 27.2.1973 the rights of the legal heirs of Kunhikannan Nambiar were obtained by the petitioner and though the documents show the extent as only one acre, it was in fact one acre 40 cents and he assigned one acre under two separate documents of 50 cents each in favour of Aboobacker and Aliyar Kunhi and another and 40 cents is the remaining property in his possession and he is entitled to get assignment of jenm right of that property. Contesting respondent contended that the petitioner is not having any right or possession over the 40 cents involved in the O.A. and there was no oral lease in his favour and he obtained only one acre covered under Ext.B1 assignment deed and he has sold the said one acre as per separate documents and he has no right over the 40 cents involved in the O.A and hence the O.A. is to be dismissed. The

Land Tribunal on appreciating the evidence, after remand, dismissed the application holding that petitioner got right only over one acre covered under Ext.B1 and he was not a lessee over any extent of the property above the one acre covered under Ext.B1 and hence he is not entitled to get assignment of the jenm right. The Appellate Authority reappreciated the evidence and found that in Ext.B1 assignment deed obtained by the petitioner, the southern boundary shown is the remaining property in the possession of the assignors thereunder who are respondents 2 to 7 and it falsifies the claim of petitioner that he obtained the properties which lies to the south of the property covered under Ext.B1 either as per oral lease or under Ext.B1 and therefore he is not a tenant.

4. Ext.B1 assignment deed obtained by the petitioner from respondents 2 to 7 establish that the property assigned thereunder and the property retained by them originally obtained

as per a registered marupattam 201/1960 of S.R.O. Taliparamba from the devaswom and as per the partition deed 1322/1961, the property transferred thereunder as well as the property retained by them was allotted to the share of Kunhikannan Nambiar, and while the property has been in their possession as legal heirs of Kunhikannan Nambiar, as per Ext.B1 one acre covered under the said assignment deed was sold to the petitioner. If in fact there was an oral lease in 1960 as claimed by the petitioner, the recital in Ext.B1 would have been that the property was outstanding in the possession of the petitioner herein as a sub lessee and the intermediary right of the respondents which originally vested with Kunhikannan Nambiar was transferred by his legal heirs in favour of the petitioner. It is not what we see in Ext.B1. Ext.B1 proves that possession of the one acre property covered thereunder till the date of execution of Ext.B1, was with respondents 2 to 7.

It also proves that the property which lies to the south of the property covered under Ext.B1 was in the possession of respondents 2 to 7 as it was shown as the remaining property in their possession. Therefore petitioner cannot contend that he obtained possession of the property which lies to the south of the property covered under Ext.B1. Ext.B1 proves that he was not in possession of the property. Moreover, in Ext.B2 the assignment deed executed by the petitioner in favour of Aliyar whereunder southern 50 cents of one acre covered under Ext.B1 was sold by the petitioner, there is no mention that he obtained the property as per an oral lease originally. Instead the only case was that he obtained possession of the property, under Ext.B1 document. It falsifies the case of an oral lease of 1960. Moreover, Ext.B1 shows that Kunhikannan Nambiar obtained the property as per partition only in 1961. If so petitioner could not have obtained an oral lease from Kunhikannan Nambiar

in 1960. Eventhough it was pointed out by learned counsel appearing for petitioner that in Ext.B2 the southern boundary shown is the property retained by the petitioner, the said self serving recital in Ext.B2 will not help us to resolve the dispute. If in fact petitioner was in possession of any property to the south of the property covered under Ext.B1, then that fact would have been mentioned in Ext.B1. When Ext.B1 shows that he obtained property under the document, which lies only to the north of the property in the possession of respondents 2 to 7 while assigning the southern 50 cents covered under Ext.B1, petitioner cannot claim that the southern boundary is the remaining property retained by him. Land Tribunal and the Appellate Authority properly appreciated the evidence and found that petitioner failed to establish tenancy right. Learned counsel appearing for petitioner argued that the report of the Special Revenue Inspector shows that petitioner was the

tenant of 40 cents of the property. As found by the Appellate Authority, the report of the Revenue Inspector was based on the statements made to him by two persons who were not examined before the Land Tribunal. Without examining the said witnesses it is not possible to accept the report of the Revenue Inspector, especially when petitioner himself traces his right under Ext.B1 even while assigning 50 cents of the property under Ext.B2. It shows that the property which lies to the south of the property transferred under Ext.B1 was in the possession of respondents 2 to 7.Learned counsel also argued that necessary inference should have been drawn for dismissal of the application filed by Sivadasan, who sought his right to be recorded in respect of one acre 25 cents of the property. As rightly found by the Appellate Authority that petition was dismissed for non-prosecution and the dismissal of that petition will not establish that petitioner was the tenant of 40 cents involved in

the case. Though originally Land Tribunal relied on the decision of the Munsiff Court in O.S.178/1983, the said decree was subsequently set aside by Sub Court, Payyannur in A.S.85/1989 which was challenged before this court in S.A.550/1993. The Second Appeal was also heard along with the C.R.P. and is disposed of separate judgment. On the facts and evidence, I find no illegality or irregularity in the order passed by the Appellate Authority and the Land Tribunal.

The Civil Revision Petition is therefore dismissed.

M.Sasidharan Nambiar
Judge

tpl/-